

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
Lynchburg Division**

In re RONALD A. HARRIS, SR.)	Case No. 05-61657
)	
Debtor.)	
)	

MEMORANDUM AND ORDER

This matter comes before the court on a motion by the Ronald A. Harris, Sr., (“the Debtor”) to avoid the lien of PHC-Martinsville, Inc., dba Memorial Hospital of Martinsville & Henry County (“the Respondent”). The motion will be granted in part and denied (without prejudice) in part.

The Debtor filed a chapter 13 petition. He then filed a motion to avoid the recorded lien of the Respondent against the Debtor’s residence, commonly known as 18953 A. L. Philpott Highway, Spencer, Virginia 24165 (“the Real Property”).

The fair market value of the Real Property is \$80,000.00. There is a first deed of trust secured by the Real Property in the amount of \$93,327.00 in favor of the Respondent. The motion seeks an order declaring that the Respondent’s claim is unsecured and further declaring the Respondent’s lien is void. The Debtor may avoid the fixing of the lien. See 11 U.S.C. § 522(f)(1)A).

The Respondent’s claim shall, for purposes of the Plaintiffs’ chapter 13 plan, be classified as a wholly unsecured claim. Furthermore, the Respondent’s lien shall be treated *as if* it is void during the pendency of this case.

It is, however, premature to issue an order declaring the Defendant’s lien is void. Any lien

voided by an order in this case under 11 U.S.C. § 522(f) would be reinstated if Debtor's bankruptcy case were to be dismissed. See 11 U.S.C. § 349(b)(1)(C). Consequently, it is better to defer final order disposing of this motion until the Debtor receives a discharge in this case.

When the Debtor receives a discharge in this case, he may file a renewed motion to avoid this lien, at which time the court will consider issuing an order declaring that the lien interest of the Respondent in the Real Property is void. The Debtor may then file a copy of that order and his discharge order in this case with the Clerk of the Court for the Circuit Court in which the Real Property is located.

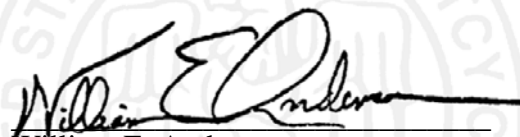
ORDER

For the foregoing reasons, the prayer that the Respondent's claim be treated as an unsecured claim under the Debtor's confirmed chapter 13 plan shall be and hereby is granted. The prayer that the Respondent's lien interest in the Debtor's real property commonly known as 18953 A. L. Philpott Highway, Spencer, Virginia 24165 be declared void is denied, without prejudice to the filing of a renewed motion to avoid the lien upon the receipt of a discharge in this case.

So ORDERED.

Upon entry of this memorandum and order, the Clerk shall forward to copy to Eric D. Andrew, Esq., counsel of the debtor, and to PHC-Martinsville, Inc., dba Memorial Hospital of Martinsville & Henry County, and to the chapter 13 trustee.

Entered on this 3rd day of March, 2006.


William E. Anderson
United States Bankruptcy Judge

